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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,592	06/25/2003	Steven E. Tivey	52493.000313	1425
21967 7590 07/14/2008 HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109				
EXAMINER				
McCORMICK, GABRIELLE A				
ART UNIT		PAPER NUMBER		
3629				
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07/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/602,592

**Applicant(s)**

TIVEY ET AL.

**Examiner**

GABRIELLE MCCORMICK

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 6-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Status of Claims*

1. This action is in reply to the Request for Continued Examination and amendment filed on June 3, 2008.
2. Claims 1, 9, 12-14 and 19 have been amended.
3. Claims 20 and 21 have been added.
4. Claims 2-5 have been canceled.
5. Claims 1 and 6-21 are currently pending and have been examined.

### *Claim Rejections - 35 USC § 112*

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1, 6-15 and 20-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
6. Applicant has amended claim 1 to incorporate the following limitation: "in response to the tagging, processing the new sales lead information by the lead processing portion in the event that the new sales lead information is determined to be an agent generated lead and deleting the new sales lead information as an agent generated lead **in the event the new sales lead information is determined to be a non-agent generated lead.**"
7. The specification discloses the following:
8. [0199] In accordance with one embodiment of the invention, a new lead validation process takes new leads and performs various processing on the new leads. For example, it may be the situation that a new lead was entered by a sales agent. The validation process compares the

lead information against an established marketing responder database. If the process determines that there are "matches" to the new lead, then the new lead is not immediately loaded into the new lead database. Instead, the new lead might be suitably coded as a "duplicate" lead. For any duplicate leads, the particular lead might be subject to agent and/or sales management review. **Such persons might compare the "agent generated" lead with the previous lead, which appears to be a duplicate, to determine the submitting agent's entitlement to the lead as an "agent generated" lead.** For example, an agent generated lead might be created when a client refers the agent to a relative of the client, i.e., thus generating a sales lead. An agent generated lead may typically result in a higher commission rate to the particular agent for that lead. As used herein, a "sales management person" is a person that has some oversight authority in the handling of leads by the agents and the securement of sales based on those leads, for example.

9. [0206] In step 262, a sales management person and/or an agent person reviews the attributes of the new lead. Then, in step 266, a determination may be made whether the new lead should be made available to the agent as agent generated business, i.e., if the lead was indeed submitted as an agent generated lead. If the process, which typically involves human input, determines that the lead should not be made available to the agent as an AG lead, the process passes to step 267. In step 267, the agent is made aware of the adverse decision and deletes the "agent generated lead" prospect, i.e., the agent knows that they will not get the higher commission rate. In accordance with one embodiment of the invention, the processing of that particular lead ends in step 267.
10. [0207] A variety of factors may be considered in determining whether an agent should receive a higher commission, even though a particular new lead is a duplicate. For example, the history of the earlier lead may be viewed by appropriate persons to see if the same agent worked on the lead, i.e., as is now submitting the duplicate lead as new business. If the agent had not worked on the lead, then the duplicate lead might never-the-less be deemed to be agent generated business. Alternatively, if the agent had worked on the lead before, then the duplicate lead would not be deemed to be agent generated business.
11. [0208] Alternatively, in step 266 of FIG. 26, the process may determine that even though the lead is technically a duplicate, it is still appropriate to designate the lead as agent generated business. Accordingly, if yes in step 266, the process passes from step 266 to step 268. In step 268, the lead is flagged to be coded as an agent generated lead. The agent's commission will be affected accordingly. After step 268, the process passes to step 270, and proceeds as described above.
12. [0209] The method of the invention as shown in FIG. 26 and described above can be used to efficiently and consistently ensure "agent generated" leads are properly evaluated by sales management and that a resulting commission or commissions, which are paid to a requester agent, is accurate. As described above, the agent generated lead is tagged accordingly as an "agent generated lead."
13. The Examiner asserts that there is no disclosure for determining that a tagged duplicate lead is a **non-agent generated** lead. The specification discloses factors relating to determining whether an agent should receive a higher commission on a duplicate lead and does not discuss a determination or handling of a "non-agent generated lead". In fact, all leads discussed with

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regard to the tagging and handling of duplicates appear to be agent generated leads. The consideration is only whether the agent deserves the higher commission.

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 1, 6-15 and 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention:
16. Claim 1 contains the limitation "deleting the new sales lead information as **an agent generated lead** in the event the new sales lead information is **determined to be a non-agent generated lead**."
17. It is unclear what it deleted. Is just the reference to agent generated lead deleted, or is the entire lead deleted? It appears initially that the lead is determined to be an agent generated lead, therefore it is unclear how it can then be determined to be a non-agent generated lead. Is there a process that categorizes leads as either agent or non-agent generated leads? Further, the term "non-agent generated lead" is unclear. In view of the portion of the specification which discloses the validation of leads with duplicate checking, there is no guidance as to a definition of a "non-agent generated lead" therefore it is unclear how this term should be construed.

### ***Claim Rejections - 35 USC § 103***

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over Dver et al. (Us Pub. No. 2002/0035504, hereinafter referred to as "Dver").

**20. Claim 16:** Dver discloses

- *an agent processor that inputs new sales lead information representing a new sales lead from an agent;* (P[0023]: system for tracking and managing sales leads where sales team (i.e., agents) use a database to manage leads; P[0024]: records are created in the system and each record is defined by an originating source.)
- *a communication network that transmits the new sales lead information to a lead processing portion; the lead processing portion;* (P[0025]: instruction is provided to process records through the workflow and Fig. 5)
- *an existing leads memory portion, the existing leads memory portion storing existing sales lead information relating to existing sales leads;* (Fig. 5)
- *the lead processing portion comparing the new sales lead information with the existing sales lead information, and determining if there is a match between the new sales lead information and any of the existing sales lead information;* (Fig. 5; P[0080-0081]: a message indicates that the lead is a potential duplicate and P[0086]: the lead is marked as an unacceptable lead and is placed in the "check duplicates" section of the database)
- *the lead processing portion retains the new sales lead, which is tagged as a duplicate, pending a sales management person review.* (P[0081]: administrator resolves the duplicate)

**21.** Dver does not explicitly disclose *the lead processing portion tagging the new sales lead information as a duplicate lead based on a determination that there is a match between the new sales lead information and any of the existing sales lead information*, however, it is obvious that for the administrator to be sent a message regarding the potential duplicate, as differentiating it from the "accepted" leads (P[0080]) as well as marking the lead as "unacceptable" as a means of alerting the need to check for duplicates (P[0086]) that these actions constitute the equivalent of tagging.

**22.** Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included tagging duplicate leads in the system disclosed by Dver, for the

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motivation of providing a method of a means of marking a lead as "unacceptable" in order to denote the need to further check if the lead is a duplicate.

23. **Claims 17 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Dver et al. (Us Pub. No. 2002/0035504, hereinafter referred to as "Dver") in view of Lamburt et al. (US. Pat. No. 6,374,241 hereinafter referred to as "Lamburt").
24. **Claims 17 and 18:** Dver discloses that records are created for leads that include a name, address and telephone number (i.e., an identifier number based on name and address) (P[0061]) and determining potential duplicate records where the names of the leads appear to be in duplicate (P[0081]). Dver does not disclose that the duplicate checking includes comparing lead identifier numbers.
25. Lamburt, however, discloses, "Each particular business entry may have a unique identifier (col. 14; lines 64-65), "a separate table for each ID corresponding to a business and its business address" (col. 15; lines 1-2) and searching for matches based on phone numbers in an existing database. (col. 41; line 63 - col. 42; line 1).
26. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included comparing phone numbers as a means of checking for duplicates, as disclosed by Lamburt, in the system disclosed by Dver, for the motivation of providing a numeric quantity or metric for determining whether two name entries match. (Lamburt; col. 43; lines 26-28).
27. **Claim 19** is rejected under 35 U.S.C. 103(a) as being unpatentable over Dver et al. (Us Pub. No. 2002/0035504, hereinafter referred to as "Dver") in view of Hollister (US Pub. No. 2003/0229504).
28. **Claim 19:** Dver discloses
- *inputting new sales lead information representing a new sales lead from an agent using an agent computer interface of a sales processing system; ; (P[0023]: system for tracking and managing sales leads where sales team (i.e., agents) use a database to manage leads;*

P[0024]: records are created in the system and each record is defined by an originating source.)

- *transmitting the new sales lead information to a lead processing portion of a sales processing system, the lead processing portion having a leads memory portion, the leads memory portion storing existing sales lead information relating to existing sales leads;* (P[0025]: instruction is provided to process records through the workflow and Fig. 5)
  - *comparing the new sales lead information, by the lead processing portion, with the existing sales lead information;* (Fig. 5; P[0080-0081]: a message indicates that the lead is a potential duplicate and P[0086]: the lead is marked as an unacceptable lead and is placed in the "check duplicates" section of the database)
  - *determining, by the lead processing portion, if there is a match between the new sales lead information and any of the existing sales lead information;* (Fig. 5; P[0080-0081]: a message indicates that the lead is a potential duplicate and P[0086]: the lead is marked as an unacceptable lead and is placed in the "check duplicates" section of the database)
  - *forwarding the new sales lead information, which is tagged as a duplicate lead for further processing, the further processing including further comparing the new sales lead information with the existing sales lead information* (P[0080-0081]: an administrator resolves the duplicates)
29. Dver does not explicitly disclose **tagging**, the lead processing portion, if there is a match between the new sales lead information and any of the existing sales lead information, however, it is obvious that for the administrator to be sent a message regarding the potential duplicate, as differentiating it from the "accepted" leads (P[0080]) as well as marking the lead as "unacceptable" as a means of alerting the need to check for duplicates (P[0086]) that these actions constitute the equivalent of tagging.
30. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included tagging duplicate leads in the system disclosed by Dver, for the



motivation of providing a method of a means of marking a lead as "unacceptable" in order to denote the need to further check if the lead is a duplicate.

31. Dver does not disclose *categorizing the lead as agent lead distinguishing the lead as business generated by efforts of the sales agent weighed against involvement of the sales lead processing entity in procurement of the new sales lead.*
32. Hollister, however, discloses "If a broker generates the lead through his marketing activities, he/she frequently charges the agent a referral fee (like 25-30% of the commission)." (para. [0024]).
33. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included categorizing the lead in order to determine commissions, as disclosed by Hollister, in the system disclosed by Dver, for the motivation of providing fair compensation for expenses incurred by a broker to generate leads. (Hollister: para. [0024]: whoever pays to generate the lead "owns" the lead.)
34. Dver discloses *determining if there is a match between the new sales lead information and any of the existing sales lead information* (Fig. 5). Dver does not disclose that this *is performed in parallel and prior to the sales agent working the new sales lead.*
35. However, these differences are only found in the **nonfunctional descriptive data** and are not functionally involved in the steps recited. **The determining of matches would be performed regardless of when the sales agent begins to work the lead.** Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
36. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the matching would take place, regardless of when the sales agent begins working the lead because such data does not functionally relate to the steps in the method claimed, thus the timing (parallel or prior to) of the match determination is not given patentable weight.

37. It is further obvious that the matching can be performed either prior to or in parallel to working the lead. It would have been obvious to one of ordinary skill in the art to allow for match determination to take place either parallel to or prior to a sales agent working the lead since the claimed invention is merely a combination of old elements (determining a match and sales agents working leads) and in the combination, each element would have performed the same function (the match would still be determined and sales agents would still work leads) as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

#### ***Allowable Subject Matter***

38. Claims 1, 6-15 and 20-21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs, set forth in this Office action.

#### ***Response to Arguments***

39. Applicant's arguments with respect to claims 16 and 19 have been considered but are moot in view of the new ground(s) of rejection. Further, the Examiner disagrees with Applicant's assertions that claim 19 contains similar limitations as argued with respect to claim 1. In particular, neither claim 19 nor claim 16 contain the amended language of claim 1.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabrielle McCormick whose telephone number is (571)270-1828. The examiner can normally be reached on Monday - Thursday (5:30 - 4:00 pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. M./  
Examiner, Art Unit 3629

/John G. Weiss/  
Supervisory Patent Examiner, Art Unit 3629